



Bloomberg L.P.

731 Lexington Ave
New York, NY 10022

Tel +1 212 318 2000
bloomberg.com

Ms. Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Submitted via email: rule-comments@sec.gov

Re: Notice of Filing of Partial Amendment No. 1 to Proposed Rule Change to Establish a Wireless Fee Schedule Setting Forth Available Wireless Bandwidth Connections and Associated Fees (File Nos. SR-NYSE-2020-11, SR-NYSE-2020-05, SR-NYSEAMER-2020-10, SR-NYSEAMER-2020-05, SR-NYSEArca-2020-15, SR-NYSEArca-2020-08, SR-NYSECHX-2020-05, SR-NYSECHX-2020-02 NYSEAT-2020-08, NYSEAT-2020-03)

Dear Ms. Countryman:

Bloomberg L.P.¹ respectfully submits this letter in response to the above-referenced amended filings (the “Amended Filings”) by the New York Stock Exchange LLC,² NYSE Arca, Inc.,³ NYSE American LLC,⁴ NYSE National, Inc.,⁵ and NYSE Chicago, Inc.⁶ (collectively, “NYSE”) to establish a wireless fee schedule setting forth available bandwidth connections and associated fees.

¹ Bloomberg – the global business, financial information, and news leader – increases access to market data by connecting market participants of all stripes to a dynamic network of information, people, and ideas. The company’s strength – quickly and accurately delivering data, news, and analytics through innovative technology – is at the core of the Bloomberg Terminal. The Terminal provides financial market information, data, news, and analytics to banks, broker-dealers, institutional investors, governmental bodies, and other business and financial professionals worldwide.

² See Securities Exchange Act Release Nos. 89458 (Aug. 3, 2020), 85 Fed. Reg. 48045 (Aug. 7, 2020) (“NYSE Amended Filing”); 89453 (Aug. 3, 2020), 85 Fed. Reg. 47992 (Aug. 7, 2020) (“NYSE Amended Filing II”).

³ See Securities Exchange Act Release Nos. 89460 (Aug. 3, 2020), 85 Fed. Reg. 48017 (Aug. 7, 2020); 89455 (Aug. 3, 2020), 85 Fed. Reg. 48035 (Aug. 7, 2020).

⁴ See Securities Exchange Act Release Nos. 89459 (Aug. 3, 2020), 85 Fed. Reg. 48052 (Aug. 7, 2020); 89454 (Aug. 3, 2020), 85 Fed. Reg. 48002 (Aug. 7, 2020).

⁵ See Securities Exchange Act Release Nos. 89457 (Aug. 3, 2020), 85 Fed. Reg. 47997 (Aug. 7, 2020); 89462 85 Fed. Reg. 48008 (Aug. 7, 2020).

⁶ See Securities Exchange Act Release Nos. 89461 (Aug. 3, 2020), 85 Fed. Reg. 48039 (Aug. 7, 2020); 89456 (Aug. 3, 2020), 85 Fed. Reg. 48024 (Aug. 7, 2020).

NYSE initially proposed to establish a set of wireless connections that would facilitate the transmission of data, including NYSE market data, through a series of towers equipped with wireless equipment, including one tower that is located on NYSE data center property.⁷ According to the Initial Proposal, the wireless connections would be operated by ICE Data Services, an affiliate of ICE (the “NYSE Affiliate”), which operates a global connectivity network.⁸ Only the NYSE Affiliate would be permitted to access the property and the pole, which is located in closer proximity to the NYSE data center than any commercial poles located off the NYSE data center property.

After receiving a number of comment letters on the Initial Proposal, NYSE is now proposing to place restrictions on the use of the pole on the grounds of the data center. Under the Amended Filings, NYSE is proposing to require that the length of the connection from the data center pole to the point inside the Mahwah data center where Exchange market data is produced be no less than the length of the connection from the closest commercial pole to the same point.⁹ NYSE is proposing to similarly restrict the length of cable according to the distances between the poles and the space used for co-location.¹⁰

Bloomberg continues to support the Commission in its determination that the proposed wireless connections are facilities of the exchange, and Bloomberg believes the Commission should continue to require NYSE to demonstrate how the proposed fees comport with the requirements of the Exchange Act.

The Wireless Connections Are Facilities of the Exchange.

In NYSE’s Initial Proposal to establish the wireless connectivity services, NYSE contended that the proposed wireless connections offered by the NYSE Affiliate were not facilities of the exchange within the meaning of the Exchange Act, and therefore the Wireless Connections did not need to be included in its rules.¹¹ The definition of a facility of an exchange under the Exchange Act of 1934 is quite broad and includes the premises, tangible or intangible property whether on the premises or not, and any right to use such premises or property or any service thereof, including any system of communication to or from the exchange. The wireless connections are physically located on the property of the data center. Under any interpretation of the word “premises,” including NYSE’s, the Wireless Connections would fall within this term. Likewise “services” are expressly covered. In our prior comment letters, we supported the staff in its position that the

⁷ See e.g., Securities Exchange Release No. 88168 (February 11, 2020), 85 Fed Reg. 8938 (February 18, 2020), available at <https://www.sec.gov/rules/sro/nyse/2020/34-88168.pdf> (the “Initial Proposal”).

⁸ Initial Proposal at 4.

⁹ See NYSE Amended Filing at 5-6.

¹⁰ See NYSE Amended Filing II at 5-6.

¹¹ See Initial Proposal at 2.

wireless connections are facilities of the Exchange, and we applaud the Commission for continuing to support this position.

The Commission Should Continue to Scrutinize Fee Filings to Ensure Consistency with the Exchange Act.

Under the Exchange Act, the fees for the underlying data: (i) should “provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities;”¹² (ii) should not be “designed to permit unfair discrimination between customers, issuers, brokers or dealers;”¹³ and (iii) should “not impose any burden on competition not necessary or appropriate in furtherance of the purposes” of the Exchange Act.¹⁴ As the Commission notes in the Order Instituting Proceedings, the “burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder . . . is on the self-regulatory organization [‘SRO’] that proposed the rule change.”¹⁵

NYSE has not justified the proposed fees or provided information that would allow the Commission to determine their consistency with the Exchange Act, Commission Rules, and associated guidance.

Conclusion

For the reasons set forth above, and for the reasons set forth in our prior comment letters, we urge the Commission to disapprove the proposals. NYSE has not fully demonstrated that the proposals are consistent with the Exchange Act and Commission Rules. We appreciate the Commission’s efforts and the Commission’s consistent interpretation of the definition of “facility.” We would be pleased to discuss any questions that the Commission may have with respect to this letter. Thank you again for the Commission’s efforts.

Very truly yours,



Gregory Babyak
Global Head of Regulatory Affairs, Bloomberg L.P.

¹² Exchange Act § 6(b)(4).

¹³ Exchange Act § 6(b)(5).

¹⁴ Exchange Act § 6(b)(8).

¹⁵ See Securities Exchange Act Release No. 88901 (May 18, 2020), 85 FR 31273 (May 22, 2020) (“Order Instituting Proceedings”).